



## U.S. Department of Justice

Environment and Natural Resources Division

*Environmental Defense Section*  
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July 11, 2013

**By CM/ECF**

Jon W. Sanfilippo  
Office of the Clerk, Green Bay Division  
United States District Court for the Eastern District of Wisconsin  
125 South Jefferson Street – Room 102  
Green Bay, WI 54301

Re: Additional Designations for the Record on Appeal in *Appleton Papers Inc., et al.*  
*v. George A. Whiting Paper Co., et al.*, Case No. 08-cv-16 and *NCR Corp. v. Kimberly-Clark Corp., et al.*, Case No. 08-cv-895

Dear Mr. Sanfilippo,

A letter was filed on July 8, 2013, designating documents to be included in the record on appeal in this matter. Dkt. 1513 in Case No. 08-cv-16. The United States respectfully requests that additional documents be included in the record on appeal. Each of these documents was filed in *NCR Corp. v. Kimberly-Clark Corp., et al.*, Case No. 08-cv-895, a case that was consolidated with *Appleton Papers Inc.* on January 19, 2009. See Dkt. 31 in Case No. 08-895. The documents that should be included in the record on appeal include:

Date	Docket No.	Description
10/22/2008	1 Case No. 08-895	COMPLAINT (Summons(es) issued) against all defendants filed by NCR Corporation. Consent Forms Distributed for Magistrate Judge A.E. Goodstein.
12/08/2008	15 Case No. 08-895	STIPULATION -- Stipulation Regarding Reserved Claims of the United States of America by United States of America.
12/10/2008	19 Case No. 08-895	ORDER approving 15 Stipulation filed by United States of America, signed by Judge William C. Griesbach on 12-10-2008. The United States need not assert the Reserved Claims in its responsive pleadings any earlier than 30 days after the Court issues a new scheduling order after the completion of Phase I. The United States may assert the United States Reserved Claims, without leave of Court, during the pendency of the first phase or within 30

		days after the Court issues a new scheduling order. NCR and Menasha shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, <i>res judicata</i> , collateral estoppel, issue preclusion, merger and bar, claim-splitting, or other defenses based upon any contention that the Reserved Claims were or should have been brought in the United States responsive pleadings in the above-captioned actions during the pendency of the first phase of the litigation or any earlier than 30 days after the Court issues a new scheduling order after the completion of Phase I. NCR and Menasha reserve the right to assert any such defense or claim with respect to any of the Reserved Claims that are first asserted more than 30 days after the Court issues a new scheduling order after the completion of Phase I. See Order for full detail.
01/19/2009	31 Case No. 08-895	AMENDED COMPLAINT in Case No. 08-C-895 against all defendants filed by NCR Corporation.
11/02/2012	45 Case No. 08-895	ORDER APPROVING 1455 in 2:08-cv-00016 Stipulation and ORDERING 1. Kimberly-Clark shall recover nothing from NCR for past response costs; 2. NCR shall reimburse Kimberly-Clark an amount equal to the full amount of any future response costs that are recoverable under 42 U.S.C. § 9607 that Kimberly-Clark may incur in connection with Operable Unit 2 through Operable Unit 5 of the Lower Fox River Site, subject to the Courts ruling on insurance offsets in the March 2011 Order (Dkt. #1080); 3. NCR shall reimburse Kimberly-Clark an amount equal to the full amount of any future natural resource damages payments that Kimberly-Clark may incur in connection with Operable Units 2 though 5 of the Lower Fox River Site, subject to the Courts ruling on insurance offsets in the March 2011 Order (Dkt. #1080); 4. Judgment entered in favor of API and against Kimberly-Clark on all of Kimberly-Clarks counterclaims; 5. Judgment entered in favor of NCR and against Kimberly-Clark on all of Kimberly-Clarks counterclaims arising under the laws of the State of Wisconsin or any other state; 6. Any order dismissing Kimberly-Clarks counterclaims against Plaintiffs without prejudice is hereby vacated, and this Order governs as to Kimberly-Clarks counterclaims against Plaintiffs, signed by Chief Judge William C Griesbach on 11/01/2012. See Order for full detail.
06/27/2013	47 Case No. 08-895	FINAL JUDGMENT signed by Chief Judge William C Griesbach on 6/25/13. Also see Amended Final Judgment entered on 6/27/13 in Case No. 08-C-16

Sincerely,

*/s/ Matthew R. Oakes*  
Matthew R. Oakes  
Counsel for Respondent EPA

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Letter was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of said filing to the attorneys of record, who are required to have registered with the Court's CM/ECF system.

Date: July 11, 2013

*/s/ Matthew R. Oakes*  
Matthew R. Oakes  
Counsel for Respondent EPA